

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

**ATHENA CHEN COPPER
& SUMIKO YAMAOKA,**

Plaintiff/Appellee,

vs.

**JOHN FRANKLIN COPPER,
ENTERPRISE NATIONAL BANK
& FIRST TENNESSEE BANK,**

Defendant/Appellant.

) From the Shelby County Circuit Court
) at Memphis, Tennessee

) The Hon. James M. Tharpe, Judge

) Shelby Circuit No. 139279 R.D.
) Appeal No. 02A01-9302-CV-00039

) **AFFIRMED**

) Ted I. Jones
) Memphis, Tennessee
) Attorney for Appellant, John F. Copper

) Mimi Phillips
) Memphis, Tennessee
) Attorney for Appellee, Athena Copper

MEMORANDUM OPINION¹

HIGHERS, J.

I. FACTS

Athena Chen Copper ("Wife") filed suit for divorce against Dr. John Franklin Copper ("Husband") in the Circuit Court of Shelby County. Following a bench trial, the trial court awarded a divorce to Wife on grounds of inappropriate marital conduct, divided the marital property, and awarded \$2,000 a month alimony *in futuro* to Wife. On appeal, Husband has presented four issues for our consideration: whether the court erred in (1) awarding excessive alimony; (2) requiring part of Husband's estate be used to repay Wife's parents for alleged loans; (3) awarding attorney fees and expenses to Wife; and (4) dividing the marital property. For the reasons stated herein, we affirm the trial court's decision in its entirety.

The parties were married in 1967. They had three children, all of whom are now adults. Husband has been a professor of international studies at Rhodes College in Memphis since 1976. His academic accomplishments include serving as chairman of the Rhodes Department of International Studies, serving as director of the Asian Studies Center of the Heritage Foundation in Washington, D.C. and publishing many books on Chinese and Taiwanese politics.

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied upon for any reason in a subsequent unrelated case.

FILED

December 20, 1995

**Cecil Crowson, Jr.
Appellate Court Clerk**

Wife, who was born in Taiwan, was a homemaker for nine years until 1976, when she took a night job as key-punch operator. Since 1978, she has worked as a data entry employee and as a computer programmer for various companies. Through her work experience, she acquired skills on mainframe computers, which have now been replaced for the most part by "P.C.'s," thereby rendering her skills virtually unmarketable.

The trial court valued the known marital assets at \$589,431.74. Each party was awarded a residence. The trial court awarded to Husband certain bank accounts and bonds totalling approximately \$54,749.00, other personal property valued at an estimated \$40,800.00, the full value of one of his retirement plans, and half of another retirement plan. Wife was awarded the remainder of Husband's retirement funds, bank accounts and an IRA totalling \$13,950.00, and \$15,637.00 in personal property. Basically, the trial court awarded 45% of the marital estate to Husband and 55% to Wife.

The trial court found that Wife was not a candidate for rehabilitation and awarded to her \$2,000 a month alimony *in futuro*. The court stated that it based this award on several factors, including that the marriage was of long duration, that Wife's computer skills were outdated, Wife's age (51 at the time of trial), and Wife's unfamiliarity with the English language.

The court ordered Husband to repay from his separate property certain funds that he had improperly taken from both the marital estate and from Wife's family.

The marital liabilities were divided equally and each party was ordered to pay half of the debts. Part of the marital liabilities consisted of a loan taken out by Wife for her attorney fees.

II. ALIMONY

Husband first contends that the trial court's award of alimony to Wife was excessive. This argument is without merit.

The amount of alimony awarded in a divorce case lies within the discretion of the

trial court. This Court will not interfere absent a showing of an abuse of that discretion.

Loyd v. Loyd, 860 S.W.2d 409, 412 (Tenn. App.1993).

The trial court's award of alimony *in futuro* to Wife in the present case comports with the statutory guidelines found in T.C.A. § 36-5-101(d). After satisfying the requisite threshold determination that Wife was not a candidate for rehabilitative alimony, the trial court specifically considered Wife's lack of marketable skills, the fact that the marriage was of long duration, Wife's age, and "other facts involved in the dissolution of this marriage." Moreover, the record clearly shows Wife's need for the alimony.

Further support for our determination that the alimony award was not excessive is found in the record, which contains testimony indicating that Husband was at fault in the marriage. Fault is an appropriate factor to consider in an alimony award. T.C.A. § 36-5-101(d)(10). Two of the parties' adult children and the Wife testified that Husband physically abused them. Other testimony revealed that Husband consistently treated Wife in a demeaning manner and committed frequent infidelities.

We find that the evidence preponderates in favor of the trial judge's decision on the issue of alimony.

III. LOAN FROM WIFE'S PARENTS

Wife's parents intervened in this case and filed a claim against Husband, seeking money for repayment of a loan made by Wife's parents to Husband. The *ad damnum* clause requested \$40,000 and interest thereon, plus such other general and specific relief to which they may be entitled. The trial court ordered Husband to pay Wife's parents \$70,657.60, which represented interest on Wife's parents CD's that he appropriated, the \$40,000 loan, and \$12,000 for three years' interest on the \$40,000 loan.

Husband argues that the trial court's award was error because it exceeded the amount contained in the prayer for relief and because the loans were beyond the six-year statute of limitations.

We find the fact that the trial court's judgment exceeded the prayer for relief to be

immaterial under the facts and circumstances of this case. A trial court in a domestic relations case has discretion to order the repayment of a party's obligations or debts in such a manner that is just and equitable. Hanover v. Hanover, 775 S.W. 2d 612, 614 (Tenn. App. 1992); Storey v. Storey, 835 S.W. 2d 593, 599 (Tenn. App. 1992).

The fact and the amount of Husband's debts to Wife's parents was proved at trial. Both oral testimony and documentary evidence revealed that Husband wrongfully appropriated the interest that accrued upon funds that Wife's parents had entrusted to Husband for investment purposes. We find no abuse of discretion by the trial judge in ordering Husband to repay Wife's parents.

Husband's second argument, that the loans were barred by the statute of limitations, is without merit because Husband did not affirmatively plead this defense at the trial court level. Where a defendant raises this issue for the first time on appeal, the defense is raised too late. Ingram v. Phillips, 684 S.W.2d 954, 959 (Tenn. App. 1984). If a defendant fails to plead the statute of limitations within the proper time and in the proper manner, it is deemed waived. Steed Realty v. Oveisi, 823 S.W.2d 195, 197 (Tenn. App. 1991).

Finally, Husband argues that the existence of loans was not supported by the evidence. This contention is without merit. There is ample evidence from the record in the form of testimony and documents supporting the existence of the loans.

IV. DIVISION OF MARITAL PROPERTY

Husband's issue contesting the trial court's division of marital property comes to us accompanied by several guiding principles of law. Trial courts have broad discretion in dividing marital estates, and their decisions are afforded great weight on appeal. Harrington v. Harrington, 798 S.W.2d 244 (Tenn. App. 1990). A trial court's findings are accompanied by a presumption of correctness, unless the evidence preponderates otherwise. Barnhill v. Barnhill, 826 S.W.2d 443, 459 (Tenn. App. 1991), and the division of property need not be equal to be equitable. Batson v. Batson, 769 S.W.2d 849, 859 (Tenn. App. 1988).

In the present case, the trial court properly considered the factors set forth in T.C.A.

§ 36-4-121(c) in distributing the marital estate. We perceive the final result of such division, which was virtually equal, to be equitable to both parties. Accordingly, Husband's third contention is without merit.

Similarly, the trial court did not abuse its discretion in awarding to Wife part of her attorney fees. She did not receive a substantial amount of liquid assets through the property distribution. In addition, an award of attorney fees is to be evaluated under the same analysis as is an alimony award. In light of the factors delineated in T.C.A. § 36-5-101(d), we hold that the award of attorney fees to Wife was proper.

Wife requests that she be awarded her attorney fees on appeal. Upon the facts before us, we do not find that any further award is justified. We therefore respectfully decline her request.

The judgment of the court below is affirmed. Costs of this appeal are assessed against appellant.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

FARMER, J.